



June 20, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, 13-236

Dear Ms. Dortch:

On June 16, the undersigned and Erin Dozier of the National Association of Broadcasters (NAB) met with David Grossman of the Office of Commissioner Clyburn to discuss issues related to the pending 2010 and 2014 quadrennial reviews of the broadcast ownership rules. In light of the Third Circuit Court of Appeals' recent decision addressing these incomplete reviews,<sup>1</sup> we reemphasized NAB's positions that the Commission should eliminate the outdated cross-ownership rules and significantly reform the local TV ownership rule, as none are supported by any competition or diversity analysis relevant to today's media marketplace. We also reiterated that eliminating the UHF discount without addressing the national TV ownership rule would be arbitrary and capricious.

NAB specifically discussed the Third Circuit's singling out of the newspaper/broadcast cross-ownership rule, and the court's observation that the 1975 prohibition still remains in effect despite the FCC's determination over a decade ago that the ban no longer serves the public interest.<sup>2</sup> We urged the FCC to follow the court's direction that the newspaper cross-ownership prohibition is outdated and, as NAB has long argued, to eliminate it, given that the ban's purported rationale has evaporated in the Internet age.<sup>3</sup>

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<sup>1</sup> *Prometheus Radio Project v. FCC*, Nos. 15-3863, 15-3864, 15-3865 & 15-3866, at 35-36; 42 (3d Cir. May 25, 2016) (*Prometheus III*) (faulting the FCC for failing to conclude the mandatory quadrennial reviews and stating that it expects the FCC to finalize and adopt an order completing these reviews by the end of the year).

<sup>2</sup> *Id.* at 38.

<sup>3</sup> See, e.g., Comments of NAB, MB Docket Nos. 14-50, *et al.*, at 9-31; 70-84 (Aug. 6, 2014) (NAB 2014 Comments).

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NAB also emphasized the importance of significantly reforming the local TV ownership rule. The FCC has provided no competitive analysis based on empirical evidence that supports retention of the current rule. Neither of its components – the eight-voices test or the top-four restriction – reflect competitive realities in today’s multichannel, multiplatform video marketplace. We stressed that both elements of the rule are based on the erroneous proposition that broadcast TV stations are the only relevant competitors in local markets and that competition from all other outlets can rationally be ignored.<sup>4</sup> Additionally, as NAB previously explained in detail,<sup>5</sup> the Commission has consistently failed to demonstrate in any way that eight independently owned and operated full power TV stations are necessary to preserve competition in local markets.

NAB also reiterated its support for initiatives that will promote increased ownership of broadcast outlets by minorities and women. Such goals will not be met, however, by continuing to depress the value of broadcast properties by prohibiting efficient combinations. Instead, the Commission should focus on solutions aimed at addressing the leading barrier to ownership diversity: access to capital. Such measures have been effective in the past and several can be adopted by the Commission without further Congressional action.<sup>6</sup> Claims that the current broadcast ownership rules are necessary – or even relevant to – promoting diversity of ownership by minorities and women are unsubstantiated and are belied by the current levels of ownership diversity.<sup>7</sup>

Finally, NAB highlighted its comments in the pending proceeding on the UHF discount and reiterated its position that eliminating the discount – which exists only as a calculation methodology for the national TV ownership cap – without considering the cap itself would be arbitrary and capricious.<sup>8</sup> Taking such action also would be contrary to the Third Circuit’s recent *Prometheus III* decision, where the court reversed the FCC for attributing TV joint sales

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<sup>4</sup> Cable viewing shares have long surpassed broadcast TV stations’ viewing shares and that online video options are now very significant competitors for both viewers and advertisers in local markets. NAB Written *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, at 5-10 (June 6, 2016). See also NAB 2014 Comments at 33-50.

<sup>5</sup> See NAB 2014 Comments at 55-59; Reply Comments of NAB, MB Docket No. 09-182, at 14-15 (Apr. 17, 2012); Comments of NAB, MB Docket No. 09-182, at 27-29 (Mar. 5, 2012).

<sup>6</sup> NAB Comments at 91-95; Letter from NAB and MMTC to Marlene H. Dortch in MB Docket Nos. 09-182 and 07-294 (Jan. 30, 2013); Comments of NAB in MB Docket Nos. 09-182 and 07-294 at 7-9 (Dec. 20, 2012) (discussing numerous incentive-based proposals that could be adopted by the Commission, including an incubator program and an updated definition of “eligible entity”).

<sup>7</sup> Comments of NAB in MB Docket No. 14-50 at 89 (Aug. 6, 2014) (NAB Comments)(“NAB fully agrees with the Commission that increasing broadcast ownership opportunities for minorities and women is an important public policy goal. We disagree, however with the contention that retaining current structural ownership limits advances this policy. One need only observe that although structural rules have been in place for more than 70 years, women and minorities remain under-represented among broadcast owners.”).

<sup>8</sup> See Comments of NAB, MB Docket No. 13-236 (Dec. 16, 2013). Consistent with our previous comments, NAB continues to take no position as to whether the national cap should be retained at its current level, modified or eliminated.

agreements – and thereby making the ownership rules more stringent – without first determining whether the existing ownership rules were still sound and served the public interest.<sup>9</sup> Similarly, the Commission cannot, consistent with the Communications Act, eliminate the UHF discount, and thus alter the national TV ownership rule, without determining whether that rule still serves the public interest and, if so, at what level.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal flourish extending to the right.

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Rick Kaplan  
General Counsel and Executive Vice President  
Legal and Regulatory Affairs

cc: David Grossman

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<sup>9</sup> *Prometheus III*, at 52.